

Office of Chief Counsel  
Internal Revenue Service  
**memorandum**

CC:WR:LA:TL-N-5051-98

date: January 4, 2001

to: Larry Smoller, Team Coordinator  
IRS LMSB Group 1117  
225 West Broadway, 2<sup>nd</sup> floor  
Glendale, CA 91204-1331

from: Marilyn Devin, Attorney  
District Counsel, Los Angeles

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subject: [REDACTED] - [REDACTED] Form 1120 Statute Extension

You have sought Counsel's guidance in determining who is the proper party to execute a Form 872 (Consent to Extend the Time to Assess Tax) on behalf of the above taxpayer with respect to your examination of taxable years prior to [REDACTED].

As I understand them, the facts concerning the changes to the taxpayer's ownership structure are as follows: Prior to [REDACTED] (and encompassing the tax year here in question), the taxpayer was autonomous, that is, the entire consolidated group of corporations was owned by the [REDACTED] ("[REDACTED]").

[REDACTED] was subsequently acquired by [REDACTED]. As of [REDACTED], [REDACTED] percent of [REDACTED]'s shares became the property of [REDACTED] ("[REDACTED]"). On that date, a "reverse acquisition" under Treasury Regulation Section 1.1502-75(d)(3) took place. The [REDACTED] consolidated group survived, with a new parent: [REDACTED] ("[REDACTED]").

On the following day, there was another reverse acquisition. This time, the [REDACTED] consolidated group did not survive, but was terminated and merged into [REDACTED]. Henceforth, [REDACTED], the new common parent, filed consolidated returns for the group into which [REDACTED] had been subsumed.

Where a common parent remains in existence, even if it is no longer the common parent, it remains the agent for the group with regard to years in which it was the common parent of the group. Treas. Reg. sections 1.1502-77(a); 1.1502-77T(a)(4)(i). Here, prior to its merger into [REDACTED], [REDACTED] was the common parent for the [REDACTED] consolidated group's taxable years and therefore was *until then* the proper party to sign an extension of the statute of limitations with regard to those years. However, as a result of the [REDACTED] step in the merger, [REDACTED] went out of existence. Accordingly, assuming that the merger qualifies as a statutory merger and that [REDACTED] is a "successor" under state law, [REDACTED] is now the proper party to execute a Form 872 regarding the [REDACTED] group's prior taxable years. Treas. Reg. Section 1.1502-77T(a)(4)(ii).

Please note that two assumptions are important here, and should be confirmed by the examiners: First, that [REDACTED]'s NOL's, earnings and profits, etc. carried over to [REDACTED]. See I.R.C. Section 381(a). Second, that in the merger agreement, [REDACTED] assumed [REDACTED]'s liabilities. See *Southern Pacific Trans. Co. v. Commissioner*, 84 T.C. 387, 394 (1985).

Under Regulation Section 1.1502-77(d), if a common parent corporation contemplates dissolution, or is about to be dissolved, or if for any other reason its existence is about to terminate, it must notify the district director with whom the consolidated return is filed of such fact and designate another member as agent to act in its place. If [REDACTED] did, in fact, make such a designation, the designee is virtually certain to be [REDACTED], and the document [REDACTED] submitted to the district director should be located and added to the case file.

For extending the statute of limitations, we recommend the following caption:

[REDACTED] (E.I.N. XX-XXXXXXX), as alternative agent for the [REDACTED] consolidated return group pursuant to Temp. Treas. Reg. Section 1.1502-77T, and as successor by merger of [REDACTED] (E.I.N. XX-XXXXXXX).\*

Put an asterisk immediately thereafter (as shown). At the bottom of the page, add the following footnote:

This is with respect to the consolidated tax liability of the [REDACTED] (E.I.N. XX-XXXXXXX) [REDACTED] consolidated return group for the taxable year(s) \_\_\_\_\_.

A current officer of [REDACTED] should sign the form. Under the officer's signature line, you should type in his or her name, title and the corporate name "[REDACTED]" (and, of course, a blank line for the date).

I trust this has answered your questions. If you wish to discuss the matter any further, don't hesitate to call.